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March 21, 2022

Via ECF

Hon. James M. Wicks
United States Magistrate Judge
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722

Re: Index No.: 2:20-cv-05087-GRB-JMW; Walsh v. Top Notch Home Designs Corp. et al

To the Honorable Court:

My office represents Defendants, Top Notch Home Designs Corp. d/b/a Top Notch and Leonidis "Luis" Priftakis ("Defendants"), in the above referenced matter. I write to the Court in response to Plaintiff's Status Letter dated March 18, 2022.

Plaintiff describes difficulty in obtaining discovery responses, yet, Defendants have complied with substantially all of Plaintiff's claims. Notably, since the last conference, we have produced all records in my clients' possession and those that could be readily obtained. We have, however, been frustrated in our attempts to obtain discovery from Plaintiff, as described in my Status Letter filed on March 18, 2022.

The two remaining items are old notebooks and text messages. Affidavits regarding unavailable records will be provided to Plaintiff this week.

The Notebooks:

My client advised that he maintained records of days worked by workers in notebooks that contained handwritten entries. In 2020-2021, he believed he had them. Prior to 2019, he

had an office space he rented. At some point, he moved his office to his home basement and moved all papers to his home office. Thereafter, at some time prior to the investigation, his basement was flooded. Whatever paperwork he had was mostly destroyed and discarded. However, the paperwork left was boxed up and stored. Defendant Priftakis did the repairs himself with some of his own workers. He did not maintain receipts, nor did he file an insurance claim.

Throughout 2020 to the date of depositions, Defendant Priftakis made efforts to locate the old notebooks. Unfortunately, the notebooks from 2016 to 2019 were not discovered. All current notebooks were provided for years 2020 to 2021.

This is unfortunate more for Defendants as the notebooks would have been helpful for their defense, so they have not been deliberately withheld. In fact, the only reason they even known about the notebooks is because my clients disclosed that they had existed. At the time, Defendant Priftakis was unaware they had been destroyed as he never catalogued what documents were lost due to the flood as he never anticipated this litigation. Plaintiff's counsel questions my clients' credibility and comments she finds it "hard to believe," that the notebooks were destroyed. These conclusory statements and opinions of counsel are mere speculation and wholly inappropriate for a status letter.

My clients will be available for a follow up deposition and counsel is free to inquire more about the flood at that time.

The Text Messages:

The text messages from Defendants' phone have been provided. The text messages Plaintiff's counsel refers to in their Status Letter are those belonging to his workers, who are non-parties. These phones are not in Defendants' possession or control. Coordinating with third parties to give up their only phones to download text messages is an overly burdensome request. Despite this, my client has arranged to have them delivered to the IT professional tomorrow, so any requested texts, if available, will be provided.

All payroll records, information, and all other demands that my clients could obtain have been provided.

I respectfully request that the Court disregard Plaintiff's commentary and conclusory allegations against Defendants.

Thank you for your attention to this matter.

Very Truly Yours,
/s/ Pankaj Malik
Pankaj Malik, Esq.

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